

Department of Environmental Protection and Resource Management
105 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. SWM 01680-001

Maiden Choice Associates
c/o Dr. Norberto Machiran
720 Maiden Choice Lane
Baltimore, MD 21228

720 Maiden Choice Lane

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on September 1, 2009 for a Hearing on a citation for violations under the Baltimore County Code (BCC) section 33-4-109, 33-4-110, 33-4-11: violation of the Code Enforcement Officer Order to repair Storm Water Management Facility and submit as-built plans regarding residential property known as 720 Maiden Choice Lane, 21228.

On August 17, 2009, pursuant to Baltimore County Code §3-6-205, Inspector Randy Hoffer issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$15,000.00 (fifteen thousand dollars).

The following persons appeared for the Hearing and testified: Dr. Norberto Machiran, represented by David A. Carney, Esquire, Jeffrey Madrow, contractor for Dr. Norberto, Al Wirth, Manager of the Stormwater Engineering division of the Department of Environmental Protection and Resource Management (DEPRM) and Randy Hoffer, Inspector for DEPRM.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. This Citation was issued on August 17, 2009, after Respondent failed to comply with the schedule for correction provided in this Hearing Officer's Final Order issued June 22, 2009.

B. The Findings of Fact and Conclusions of Law in that Final Order are incorporated herein by reference.

C. The prior Final Order imposed a \$30,000.00 (thirty thousand dollars) civil penalty and provided for a \$15,000.00 (fifteen thousand dollars) reduction if the defective vertical riser was removed by June 29, 2009; and provided for a further \$14,00.00 (fourteen thousand dollars) reduction if Respondent reached agreement with DEPRM on a repair plan by July 17, 2009 and completed repairs according to that schedule.

D. Respondent complied with the first part of the repair order, removing part of the vertical riser before June 29, 2009. A repair plan and schedule was agreed with DEPRM, with completion scheduled for July 31, 2009 pending weather delays, but Respondent failed to complete the repairs by July 31, 2009. Inspector Hoffer testified that the contractor was pulled off the job site with the work unfinished and the embankment exposed.

E. Respondent's attorney, Mr. Carney, stated that Respondent was unable to complete the repairs in July 2009 due to lack of funds. Respondent has obtained a loan this week, and has engaged an engineering consultant and a contractor to do the necessary work. Pipe has been ordered. He further stated that Respondent will be seeking contributions from other responsible parties to help pay for the work, by filing civil actions to enforce private development agreements. Contracts in the file show that costs will exceed \$16,000.00 (sixteen thousand dollars) just to accomplish the required facility repairs. In addition to requesting additional time to complete the repairs, Mr. Carney requested four months of additional time for Respondent to provide the certified as-built plans to the County, due to the significant extra cost of obtaining the plans.

F. Robert Alexander Wirth, P.E., is Manager of Stormwater Engineering for DEPRM. Mr. Wirth testified that DEPRM's priority is to get the facility fixed, to prevent failure of the embankment and to prevent water pollution, not to obtain civil penalty fees. He stated that obtaining the certified as-built plans is important but not as urgent as the repairs. He suggested 30 days of additional time to submit the as-built plans.

G. Following this Hearing, Respondent's consultant notified DEPRM that pipe delivery is expected by September 10, 2009 and that the contractor will then require four or five days to complete repairs. Because compliance is the goal of code enforcement, and Respondent is now taking all necessary steps to repair this unsafe storm water facility, additional time will be provided for compliance with county requirements.

IT IS ORDERED by the Code Enforcement Hearing Officer that the civil penalty imposed by Final Order dated June 22, 2009 is RESCINDED.

IT IS FURTHER ORDERED that a civil penalty be imposed in the amount of \$15,000.00 (fifteen thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED by \$10,000.00 (ten thousand dollars) if necessary repairs to the storm water facility are completed by October 2, 2009. Even if certified as-built plans are not yet available, Respondent must provide sufficient information and documentation for DEPRM to determine that the required repairs have been completed.

IT IS FURTHER ORDERED that the civil penalty will be further REDUCED by \$4,500.00 (four thousand five hundred dollars) if the required certified as-built plans for this facility are provided to DEPRM by February 26, 2010.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed and placed as a lien upon the property. The County shall not issue a bill unless and until Respondent fails to meet a compliance date as provided above; if both reductions are achieved, the civil penalty imposed shall be \$500.00 (five hundred dollars).

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 16th day of September 2009.

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Environmental Protection and Resource Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.